IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3629 of 2006.

Date of decision : 29.9.2006.

Ajay Kumar and others .....Appellants

versus

Shri Raj Kumar .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Chetan Mittal, Advocate for the appellants

Mr.Rohit Ahuja, Advocate for the Caveator-respondent.

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ORDER

HEMANT GUPTA, J. (oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for possession filed by Raj Kumar, purchaser by virtue of sale deed dated 11.3.1999, was decreed.

One Shankar Dass purchased the property in dispute from Piara Ram and Chanan Ram vide sale deed dated 2.6.1969. Shankar Dass executed a sale deed dated 11.3.1999 in favour of the plaintiff i.e. his son. The defendants are none else but grand sons of Shankar Dass through his another son Ram Lal.

It is the case of the defendant-appellants that they were in possession of the premises in dispute as tenants prior to purchase and since they are in possession as tenants, therefore, the decree of possession cannot be granted against them. To prove the plea of tenancy, the defendants have

produced rent receipts Exhibits D-1 and D-2 and documents Exhibits D-3 to D-24 i.e. bills from the Electricity Board and that of the Municipal Corporation. It has been found that the receipts Exhibit D-1 and D-2 do not bear any date, month and year and that keeping in view the relationship between the parties, the possession of the appellants cannot be deemed to be that of tenants. Reliance is also placed on the previous suit for permanent injunction filed by the defendants, wherein the plea of tenancy was not raised.

Learned counsel for the appellants has vehemently argued that though the receipts Exhibit D-1 and D-2 do not bear any date, month and year, but such receipts are admitted to be executed by Shankar Dass and perusal of the said receipts would lead no manner of doubt that possession of the defendant-appellants was that of tenants. Once the receipts were admitted by Shankar Dass, the defendants were not required to prove the said receipts in any other manner. The learned First Appellate Court has erred in returning a finding that such receipts are forged receipts.

May be, on account of admission of Shankar Dass of such receipts Exhibits D-1 & D-2, no further proof of the receipts was required, but keeping in view the facts that such receipts do not bear date, month and year of its execution and the fact that defendants are none else but grand sons of said Shankar Dass, the said receipts cannot confer any tenancy rights in favour of the defendants. Still further, in the previous suit the defendants-appellants have not raised the plea of tenancy, which necessarily mean the plea of tenancy is an after thought.

Both the Courts below have recorded possible findings of law on the basis of proper appreciation of evidence to return the concurrent

finding of fact. I do not find any illegality or irregularity in the findings recorded by the Courts below which may raise any substantial question of law in the second appeal, for consideration of this Court.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

September 29, 2006.

**mohinder*